IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7392 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HUSENBHAI SAHEBKHAN BHATTI

Versus

DELEATED AS PER COURT ORDER DATED 14/12/91

Appearance:

MR RAJENDRA PATEL for Petitioner

MR SV RAJU for Respondent No. 3

MR BY MANKAD, AGP for Respondent No.4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/06/2000

ORAL JUDGEMENT

1. This petition is preferred under Article 226 and/or 227 of the Constitution of India by the petitioner- original applicant of MAC Petition No.416/86. It is the say of the petitioner that he had sustained injuries in a motor vehicle accident, and had preferred

claim petition for a compensation for Rs.50,000/ before the learned MAC Tribunal, Sabarkantha at Ahmedabad. Vide judgment and award dated 1.2.1990, learned MAC Tribunal, Sabarkantha at Himmatnagar partly allowed the claim petition and ordred opponent nos. 1 & 2 of the claim petition jointly and severally to pay an amount of Rs.25,000/ (Rs. Twenty Five Thousand only) with running interest at the rate of 12% from the date of application till it's realisation and proportionate costs. The learned MAC Tribunal, however, ordred that award be drawn after the applicant -petitioner deposits Court fee stamps, if any, with the Tribunal. It is against the later part of the judgment and award in so far as directing that award should be drawn after the applicant deposits Court fee stamps, the petitioner has preferred this petition. It appears that original respondent nos. 1 & 2 have been deleted and later on Collector, Sabarkantha is joined as respondent no.4 in the matter.

2. On call, learned counsel Mr. Rajendra Patel, appearing for the petitioner is absent. It is brought to the notice of this Court by learned AGP Mr. Mankad that Mr. Rajendra Patel has joined Gujarat Universities Service Tribunal. Under the circumstances, as per the practice and procedure, petitioner is required to be intimated about the same by the office by issuing notice so as to enable him to make necessary arrangements. However, since this Court is inclined to allow the petition passing order in favour of the petitioner, no such formal notice is required to be issued to the petitioner and as no adverse order is to be passed against the petitoner. Hence, the present petition is heard today and is disposed of by this judgment.

3. During the course of arguments, learned AGP Mr. Mankad representing Collector, Sabarkantha has drawn attention of this Court to a decision rendered in the case of Kishan Chand Wadhumal v K.M.Satwani & another, reported in 1975 ACJ 433 wherein this Court (Coram: J.B.Mehta & P.D.Desai, JJ) has held as under :-

" A perusal of the scheme of the Court Fees Act would really bring out the legislative intention that it never intended to creat here any such condition precedent. In sec.13(1) of the Bombay Court Fees Act, 1959, it is in terms provided that in a suit for the recovery of possession of immovable property and mesne profits or for mesne profits or for an account, the difference, if any, between the fee actually

paid and fee which would have been payable had suit compromised the whole of the proceeds or amount found due, shall on delivery of judgment, be taxed by the Court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be recoverable according to law and under the rules for the claims being in force for the recovery of arrears of land revenue. Sub-clause (2) provides that the Court shall send a copy of the decree passed in such suit to the Collector. Suub-clause (3) which is material elacts that no decree for mesne profits passed in any such suit by the Court shall be executed until a certificate to the effect that such difference is paid or recovered, signed by the Court which passed the decree or by the Collector who recovered the amount, be produced along with the application for such execution. Therefore, in the aforesaid particular case where the legislature knows that a deficit has to be recovered by way of Court-fees, a specific provision is made in sec.13 that deficit shall be taxed on the delivery of judgments and shall be leviable from the plaintiff and if not paid by him within 30 days from the date of judgment, be recoverable according to law hence under the rules for the time being in force for recovery of arrears of lands revenue. That is why, a copy of the decree has to be sent to the Collector. A further prohibition is inacted in sec.13(3) that no decree for mesne profits passed in such suits by the Court shall be executed, until a certificate to the effect that such difference is paid or recovered, signed by the Court which passed the decree or by the Collector who recovered the amount, is produced along with the application for such execution. Therefore, whereever the legislature intended to creat any such condition precedent for taxing up the Court-fees and recovering from the plaintiff within particular period from the date of the judgment, it has made specific provision on that behalf by directing the Court to tax such amount on the delivery of the judgment and a further provision is made for recovery even by way of arrears of land revenue. Besides, a condition precedent is created against such decree being executed without necessary certificate that the deficit court-fee amount has been paid. The language used in the relevant rule 292 is totally

different in view of the laudable object behind the statute. This is why the legislator has not created any such condition precedent that the award shall not be drawn unless the court-fee is paid. The legislator was conscious of the fact that an indigent litigant could hardly afford to fulfil the condition precedent, and it would only enable the tortfeasor to escape. Such a condition precedent would really defeat the entire object of this Act and even may make the State lose its revenue. Therefore, no such condition precedent was rightly enacted had it was done in the aforesaid section 13 of the Court-fees Act."

After considering the relevant rules and the provisions of C.P.Code and the scheme of Court-fees Act, Bench in the very judgment, has also further held that :-

" In any event, so far as the second question is concerned as to the duty of the Court to draw up a decree in accordance with the judgment, this aspect would hardly have any relevance that the decree would or would not become executable witout the Court fee deficit first being made good. The Court would hardly be concerned with the second question when it has a mandatory duty to draw up the award in accordance with this judgment. "

4. In my view, the point raised in the present petition is squarely covered by the above decision. It is pertinent to note that, this Court (Coram: C.K.Buch, J), in a petition raising identical point as is raised in the present petition, in the case of Bhalabhai K.Kotwal v/s Pravinchandra M.Nayak, while dealing with Spl.C.A. No.8559/90, allowed the said petition vide oral judgment dated 16.6.2000 holding that learned MAC Tribunal, Sabarkantha at Himmatnagar has committed an error in incorporating a condition in the judgment and award directing the registry not to draw the award till the amount of deficit court fee is paid. In nutshell, the point raised in this petition is upheld in the decision rendered by this Court in Spl.C.A. No. 8559/90 as well as the same is squarely covered by the decision of this Court in the case of Kishan Chand Wadhumal (supra). Under these circumstances, this petition also requries to be allowed.

5. For the reasons aforesaid, petition is allowed. Impugned judgment and award dated 1.2.1990 passed by the learned MAC Tribunal, Himmatnagar in MAC Petition No.416/86 in so far as directing not to draw an award unless petitioner pays deficit Court-fee, is hereby quashed and set aside. Tribunal shall draw the award as per the judgment. Rule is made absolute acordingly with no order as to costs.

23.6.2000 [C.K. BUCH, J]
*rawal